APPENDIX A

The National Labor Relations Act, 61 Stat. 146, 73 Stat 544, as amended, 29 U.S.C. 151, *et seq.*, insofar as here relevant, provides:

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * *

Representatives and Elections

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

* * *

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) * * *

the Board shall investigate such petition and if it has reasonable cause to believe that a question of rep-

resentation affecting commerce exists shall provide for an appropriate hearing upon due notice. * * * If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof. * * *

* * *

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * *

(e) The Board shall have power to petition any court of appeals of the United States, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code.

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(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

APPENDIX B

The following articles all recognize the issue of the power of the Board to make whole employees for losses suffered as the result of a refusal to bargain as an important unsettled issue:

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83 Harv. L.Rev. 1732 (May 1970), Remedies: NLRB has authority to order retroactive payments of fringe benefits where employer wrongfully refuses to sign contract

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Schlossberg, Stephen I., Silard, John, The Need for a Compensatory Remedy in Refusal-to-Bargain Cases, Wayne L.Rev. Vol. 14, No. 4, p. 1059, 1968

St. Antoine, A Touchstone for Labor Board Remedies, 14 Wayne L.Rev. 1039 (1968)

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35 University of Chicago L.Rev. 777, 787 (1968), Comment, Employer's Refusal to Bargain and the NLRB's Remedial Powers: The *H. K. Porter* Case

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